

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

IN RE:) Case No. 19-MD-2875-RBK-JS
)
VALSARTAN PRODUCTS LIABILITY)
LITIGATION)
) Camden, NJ
) November 6, 2019
-----) 4:13 a.m.

TRANSCRIPT OF TELEPHONIC STATUS CONFERENCE
BEFORE THE HONORABLE JOEL SCHNEIDER
UNITED STATES MAGISTRATE JUDGE

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1 (The following conference was heard 4:13 p.m.)

2 THE COURT: Excuse me for holding you up. This is
3 Judge Schneider. We're on the record in In Re: Valsartan MDL,
4 19-MD-2875. Can we have the names of counsel on the phone
5 starting with plaintiffs.

6 MR. SLATER: Good morning, Your Honor, Adam Slater
7 for the plaintiffs.

8 MR. HONIK: Ruben Honik.

9 MR. NIGH: Daniel Nigh.

10 MS. WHITELY: Good afternoon. Conlee Whitely.

11 MR. PAREKH: Good afternoon. Behram Parekh.

12 MR. STANOCH: Good afternoon. David Stanoch.

13 MS. GOLDENBERG: This is Marlene Goldenberg.

14 THE COURT: Okay, it sounds like that's the
15 plaintiffs' team. For the defense?

16 (Pause in proceedings)

17 THE COURT: Defendant?

18 MR. REEFER: Jason Reefer for Mylan Pharmaceuticals.

19 MR. RUBENSTEIN: Brian Rubenstein for Teva.

20 (Pause in proceedings)

21 THE COURT: Defendants, enter your appearances,
22 please.

23 UNIDENTIFIED SPEAKER: You have to press star-1 to
24 unmute.

25 MR. GOLDBERG: Good afternoon, Judge. This is Seth

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1 Goldberg for the defendants.

2 THE COURT: Anyone else besides the three of you?

3 (Pause in proceedings)

4 THE COURT: Okay. Counsel, I have your letters,
5 thank you very much, and I briefly skimmed the macro briefs
6 that came in. Before we get to the issues in your agenda, I
7 just thought it would be helpful to go over the chronology
8 because it looks like there's going to be a lot of work done
9 over the next month or so, and I want to make sure we're on the
10 same page. So bear with me, I'm going to read to you what my
11 understanding of the chronology is and you can tell me if we're
12 all on the same page.

13 Yesterday the opening briefs were filed regarding the
14 macro discovery issues that the Court identified in its order.
15 The responses to the opening briefs are due on November 18th,
16 and on November 20 we're going to have oral arguments on the
17 macro issues, and the Court is going to use its best efforts to
18 rule on those issues at the conference.

19 In addition, also due on November 20 is the final
20 version of defendants' fact sheets. On December 6 -- I'm
21 sorry, on November 27, the parties' letter briefs regarding all
22 discovery disputes are due, ESI and Rule 34 issues. The
23 responsive letter briefs are due on December 6.

24 And on December 11, the goal is to argue and
25 hopefully, absent unforeseen circumstances, decide all

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1 outstanding discovery disputes, and then at that time or
2 shortly thereafter, the initial custodian list and search term
3 list will be finalized, the objections to the Rule 34 document
4 requests will be finalized, and we'll set a deadline for the
5 production of the responsive ESI and documents.

6 So that -- that's the chronology the Court has. Does
7 anyone have anything different or were they under a different
8 impression about where we are?

9 (Pause in proceedings)

10 THE COURT: Great. Fantastic. Okay, why don't we go
11 through the discovery letters. I have Mr. Goldberg's -- well,
12 let me start with -- well, let's do this easier. Let's start
13 easy to hard. Defendants' fact sheet I guess we have to
14 clarify because this issue overlaps a couple of the issues,
15 whether the fact sheet is going to be directed to just the API
16 and finished dose manufacturing defendants, or whether it's
17 also going to be directed to the retailers and
18 wholesalers/repackagers and pharmacies.

19 I know the respective parties' positions on that from
20 the letters. In terms of the draft that's been exchanged, has
21 it only been directed to the API and finished dose
22 manufacturing defendants?

23 MR. GOLDBERG: No, it was directed to all defendants.
24 Your Honor, this is Seth Goldberg. If I could give you --
25 remind Your Honor of the -- the chronology just with respect to

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1 the defendant fact sheet to -- which may be helpful here.
2 Early in the spring or early in the summer, the Court had
3 ordered the first iteration of the defendant fact sheet to be
4 produced, and the plaintiffs produced that first version which
5 did not delineate at all between any levels of the supply
6 chain. It was just a series of requests, not -- not directed
7 to any specific levels of the supply chain.

8 The Court then set a deadline for September for
9 defendants to respond and to -- to that defendant fact sheet,
10 and we did in mid September I believe, and we proposed a
11 defendant fact sheet that was focused exclusively on the
12 manufacturing defendants because based on the discussions that
13 the parties were having with the Court with respect to core
14 discovery which was limited to the manufacturing defendants,
15 and the document requests were limited to the manufacturing
16 defendants, and comments that we had with the -- with -- in
17 conferences with Your Honor to the effect that the discovery
18 relating to the downstream levels of the supply chain was not
19 as pertinent to the liability issues, our draft of the
20 defendant fact sheet in mid September was focused on the
21 manufacturing defendants.

22 In conference with Your Honor in September about that
23 defendant fact sheet, Your Honor suggested that if plaintiffs
24 wanted to have all of the defendants be in the defendant fact
25 sheet, then that was -- that was appropriate and plaintiffs

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1 should provide a revised defendant fact sheet accordingly. On
2 October 12, plaintiffs provided a fact sheet and for the first
3 time, delineated the defendant fact sheet by supply chain
4 level. So and what has happened since is basically there are
5 now, you know, separate tracts of meet and confers on the
6 defendant fact sheet.

7 The manufacturing defendants are having a meet and
8 confer process with plaintiffs as to the defendant fact sheet
9 questions that focus on the manufacturing defendants, and the
10 retailers are having -- my understanding is have started a
11 process to have a meet and confer -- you know, instead of meet
12 and confers with plaintiffs on the retailer-specific areas --
13 you know, a retailer-specific defendant fact sheet, and the
14 reason is, you know, I mean not only that -- that chronology,
15 but the kinds of information that these different levels of the
16 supply chain would produce are -- are categorically different.

17 And so after getting that October 12th defendant fact
18 sheet, the retailers took it upon themselves to reach out to
19 plaintiffs and to begin the process of a meet and confer on the
20 retailer part of the fact sheet, and that process is ongoing.

21 THE COURT: Can I ask -- can I butt in just for a
22 couple of seconds, Mr. Goldberg? Real quickly, are the three
23 -- are there only three other categories of defendants? One,
24 retailers; two, wholesalers/repackaging defendants; and three,
25 pharmacies?

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1 MR. GOLDBERG: I believe -- I believe -- yeah, I
2 believe that -- I mean, I think the way you could -- you could
3 slice it is to say that you've got the manufacturing defendants
4 as one category, and within that you have your API and your --
5 your finished dose manufacturers.

6 You have kind of a middle category which are the
7 wholesalers, distributors and repackagers. And then you have a
8 third category which are the pharmacy defendants, which we've
9 been referring to as -- as the retailer defendants.

10 THE COURT: Are there multiple parties in the other
11 two categories -- wholesalers, distributors, repackagers as one
12 category, and pharmacies in another? Is it just one party or
13 two or are there multiple parties?

14 MR. GOLDBERG: Yeah, there are multiple parties in
15 each of these three categories. You know, there are -- from
16 the repackager distributor standpoint, there are at least, you
17 know, I would say between five and ten in this category. The
18 pharmacy category has expanded quite a bit over the past few
19 months.

20 At the early stages of this litigation, there were
21 one or two major pharmacies and Walgreens and Walmart and as --
22 as the litigation has progressed, there are now I'd say
23 another, you know, probably between five and ten very large
24 retail pharmacy chains. And of course the -- the quality of
25 the information that those pharmacies have, how they keep that

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1 information and what that information can be used for with
2 respect to this litigation is really vastly different from the
3 manufacturing-type information that the manufacturing
4 defendants have.

5 And, you know, the wholesale distributor/repackager
6 information likewise is going to be of a different quality than
7 the information that the other two groups have. So it makes
8 sense that, you know, there are really separate tracts of
9 discussion with plaintiffs on the kinds of information that
10 might be necessary to this case from these different tracts.

11 THE COURT: Mr. -- let me make --

12 MR. GOLDBERG: And --

13 THE COURT: Let me butt in here. Mr. Slater, what
14 would you think --

15 MR. GOLDBERG: Yes, Judge.

16 THE COURT: What would you think of this suggestion.
17 Okay, first, discovery directed to these two other categories
18 of defendants is unquestionably relevant to the case and
19 plaintiffs are not going to be barred from conducting relevant
20 discovery.

21 It's not only relevant to probably ultimate liability
22 issues and economic damage claims, but I believe it's also
23 going to be relevant to -- and I said this before, class
24 certification issues, ascertainability, management -- issues of
25 that sort. So you don't have to argue that you're entitled to

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1 this discovery. By the chronology that I gave, we have a lot
2 to do between now and December 11.

3 As relevant as the discovery is as to these two
4 categories, it really can't be disputed that the more important
5 discovery issues are related to the manufacturing defendants,
6 API and finished dose.

7 What I would suggest we do is let's focus all of our
8 efforts between now and December 11 on the manufacturing
9 defendants. A lot of what we decide on the macro issues, the
10 ESI and Rule 34 issues, will inform what happens with the
11 wholesalers and the pharmacies, and why don't we say between
12 December 11, whatever we can get done and the next January
13 meeting, then we will immediately turn to those other two
14 categories of defendants.

15 I haven't -- I just wonder if it makes sense because
16 we are -- we do have a lot of material significant work to do
17 in the next month if we just put these two categories aside
18 with the assurances that they're going to be addressed in
19 January.

20 MR. SLATER: I think that that's -- with one
21 exception, I think that's basically how we are proceeding, the
22 only exception is the defendant fact sheet, and I think that
23 including those two categories of defendant -- of the
24 defendants' fact sheet really shouldn't be a problem and
25 shouldn't really create a great deal of effort, and I think

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1 it's also -- it does create problems for us as the fact sheets
2 start to get exchanged if we don't have responses from the --
3 the other groups -- I'll call them the
4 distributor/repackagers/wholesaler group versus the
5 retailer/pharmacy group because we're -- we're expecting
6 especially with regard to the retailers that information that
7 they will provide will, from our understanding, likely be very
8 important to help the manufacturing defendants to be able to
9 actually respond to the defendant fact sheet.

10 And I -- I know -- I think Daniel's on -- Mr. Nigh's
11 on the phone, I'd ask maybe if he -- if you want more
12 explanation on that, he could give you a little more detail.
13 It ultimately looks that there's going to be cross-referencing
14 to try to figure out which -- which batch is which lot, where
15 it came from, when it was manufactured.

16 And we -- our understanding is we're going to need
17 information from the lower further along levels of the supply
18 chain to help inform the manufacturing defendants to provide --

19 THE COURT: Right.

20 MR. SLATER: -- information about --

21 THE COURT: Right.

22 MR. SLATER: -- the relevant factors and lots to each
23 plaintiff.

24 THE COURT: We don't have to argument relevancy.
25 There's no question --

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1 MR. SLATER: Right, right.

2 THE COURT: -- it's relevant. I'm looking at the
3 practicality of the situation. The Court's order had said that
4 the defendant fact sheets have to be finalized by November 20.
5 I think it's a heavy lift to have to be able to get these other
6 two categories finalized by November 20.

7 The manufacturing defendants are clearly the most
8 important, and I wonder -- I just think it would be better if
9 we could have one fact sheet for the API and finished dose
10 manufacturers, and then we'll have another fact sheet to be
11 entered in January for the other two categories of defendants.

12 Yes, you won't get the information at the same time,
13 but it essentially will be contemporaneous and you're going to
14 have more than enough documents to digest, so I don't really
15 see any --

16 MR. SLATER: Your Honor --

17 THE COURT: -- prejudice to the plaintiffs and I
18 don't know if anyone can reasonably argue that there's so much
19 work to do in the next month we should really focus on the
20 manufacturing defendants.

21 UNIDENTIFIED SPEAKER: (Inaudible).

22 MR. SLATER: Judge, I'm not -- I'm not -- let me just
23 talk for one second, Daniel, and I'll hand off to you.
24 I'm not pushing back a little hard on it, Judge, I'm saying
25 what we -- what we understand and I think that it may even be

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1 that once again we'll explain -- the next question may be for
2 the manufacturing defendants, is that correct, that you need
3 this information to provide your responses, but I'll hand off
4 to Daniel right now.

5 MR. NIGH: Yeah, the defense fact sheets are -- are
6 for that individual plaintiff and the medication they took and
7 the story behind that medication. So my understanding is the
8 manufacturers -- right now the manufacturers want to only
9 respond based on lot and batch numbers that the plaintiff
10 provide in their PFS.

11 That -- that's not really that helpful for us because
12 we don't have lot and batch numbers often times whereas the
13 pharmacies have the lot and batch numbers. So the structure
14 really would be that the manufacturers in order to be able to
15 respond about the story about the medication taken by that
16 plaintiff specifically, they really have to have the
17 information from the pharmacies first, you know, before they
18 can respond to that information. That's the structure that we
19 have.

20 I mean, I agree it's a heavy list of a lot of
21 information that we've got to be dealing with in the meantime,
22 but if anything, I think if we're going to -- if we
23 -- if the direction from the Court is to -- you know, to put
24 off that, then I would ask that we put off the whole defense
25 fact sheet in negotiating it until the -- until the January

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1 date, because frankly until we have the information from the
2 pharmacies about the lot and batch number for that individual
3 client, the manufacturers can't respond to that specific lot
4 and batch number --

5 MR. SLATER: Correct.

6 MR. NIGH: -- for that client.

7 THE COURT: Well, I have a --

8 UNIDENTIFIED SPEAKER: YOUR HONOR --

9 THE COURT: -- I have a feeling we're not going to
10 have an objection from the manufacturers to put off the fact
11 sheet until January, but let's hear from them.

12 MR. GOLDBERG: Well, that's right. I mean, if that's
13 -- if that's something that the Court would consider, yeah I --
14 of course we wouldn't. There are a lot of other issues that we
15 are negotiating about. I mean, we've got 122 document requests
16 to negotiate about, as well as 422 search terms.

17 And those issues will also -- you know, be -- be
18 coming up for briefing, so if the Court were inclined to push
19 the defendant fact sheet, I -- I agree, I don't think
20 defendants will object to that. It might make the other
21 discussions more productive.

22 THE COURT: Mr. Slater, for the plaintiffs, do I take
23 it there's no objection given the trade-off or the short delay,
24 but we'll finalize all the defendants fact sheets in January?

25 MR. SLATER: I think that's fine. I just -- I just

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1 want to, you know, protect us in terms of, you know, what our
2 obligations are going to be and, you know, that -- that we're
3 going to get the defense fact sheets responded to in some
4 reasonable time after the plaintiff fact sheets are going to be
5 served.

6 Maybe we can extend the deadline to respond to those
7 since there's not going to be anything pressing, that the
8 defense respond to their fact sheet, and I think also would be
9 helpful if the defense can tell us now if the manufacturers, if
10 they agree with us that they need information from the -- the
11 retailers at the very least in order to respond, that would be
12 helpful.

13 So again, there's plenty going on. Just as long as
14 we do things in a -- in a fashion that -- you know, that is
15 balanced to both sides, I have no problem with that. There's
16 clearly enough work to do.

17 THE COURT: Okay, so let's do this then. Let's --
18 I'll work out the dates. I think we're getting together in a
19 week or so. We'll have to talk about dates for meetings in
20 January, February, et cetera. I'll talk to Judge Kugler. But
21 we'll target that we're going to finalize all -- there will be
22 fact sheets for all defendants.

23 We'll have one for the API and finished dose
24 defendants, and we'll have one for all the other defendants,
25 but probably will be broken into categories. We're going to

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1 finalize that in January and I guess we should talk about
2 whether there are also going to be Rule 34 document requests to
3 the other two categories. Plaintiffs?

4 MR. SLATER: I would think definitely.

5 THE COURT: Okay. So let's --

6 MR. GOLDBERG: Your Honor -- Your Honor, this is --

7 THE COURT: Mr. Goldberg, we're not going to limit
8 those defendants to just the fact sheets, but the proviso is
9 that I would not expect that the document requests to the other
10 two categories will be nearly as extensive as the ones to the
11 manufacturing defendants.

12 And you can be rest assured that there's not going to
13 be 122 document requests of Walmart or Walgreens. We're going
14 to focus on just the relevant issues for I guess plaintiffs
15 economic model, the ascertainability issue. I don't know what
16 else those parties would be --

17 MR. SLATER: Your Honor --

18 THE COURT: -- would be important to.

19 MR. SLATER: Well, Your Honor, those defendants also
20 had, as we discussed a little bit before, independent
21 obligations to confirm that the products were what they were
22 selling, so there's -- they have liability input to this. We
23 don't know what data they were provided by the defendants -- by
24 these manufacturers. We assume they were provided information
25 about testing and confirming that the products were what they

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1 were supposed to be. And I know the way that things have gone
2 we focused on the manufacturers because that's where the
3 contamination originated.

4 However, as this case develops, it may very well be
5 that there's going to become sharp demarcations between some of
6 these defendants to the point where they're going to be not on
7 the same page at all, that there's going to be significant
8 disputes as between and among one -- one another.

9 And ultimately to the extent that there's going to be
10 either judgments or resolutions, there's -- there's a
11 possibility that these downstream defendants like the retailers
12 may end of paying significant portions of any judgment
13 depending on what access we can -- we can get to with some of
14 the other defendants.

15 I mean, those issues I mentioned at a prior
16 conference. We don't know how that's going to play out but
17 we're certainly -- we're going to -- if the point comes to that
18 payment of judgments, et cetera, we're going to be pursuing
19 those entities where we can actually get paid with the least
20 amount of heartache.

21 THE COURT: I understand. But what I'm saying is
22 when it comes to Rule 34 document requests directed to the
23 other two categories, the Court is going to sharpen its pencil
24 very sharp. It will only permit directed specific relevant
25 document requests which the Court expects will not nearly be as

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1 extensive and burdensome as the request directed to the
2 manufacturing defendants, so we'll work out a schedule for
3 that. There will be Rule 34 requests, but as I said, the Court
4 is going to sharpen the pencil very sharp.

5 Let's -- let's move on to the next issues. I'm not
6 sure what we have to discuss about the macro discovery issues
7 except I would make this one general comment. I think we have
8 reached the point in 2019 -- almost 2020, given the
9 sophistication of counsel, their experience and the complexity
10 of this litigation, that we should not be dealing with
11 boilerplate objections to discovery.

12 And if a burdensome objection is made without any
13 supporting evidence, that's a boilerplate objection. Everybody
14 knows what a boilerplate objection is. I just think we're past
15 the point where we have to deal with that issue.

16 And I would just suggest -- ask the defendants if
17 they can go back and look at their answers/objections and if
18 you want to supplement and clarify, do it because we should not
19 be dealing with those types of issues in this sophisticated
20 type of litigation with the sophisticated parties and attorneys
21 we have in this case. That's all I have to say about the macro
22 issues. Anybody else have any macro issues --

23 MR. GOLDBERG: Your Honor --

24 THE COURT: -- they want to address?

25 MR. GOLDBERG: -- yeah, this is Seth Goldberg. I do

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1 just want to address that issue, Your Honor, that you raised
2 it. The defendants have agreed with plaintiffs, we had a meet
3 and confer on Monday and we have agreed to provide revised
4 objections --

5 THE COURT: Fantastic.

6 MR. GOLDBERG: -- objections to the document
7 requests --

8 THE COURT: Fantastic.

9 MR. GOLDBERG: -- and, you know, our hope is that
10 they will be satisfactory so the Court does not have to --

11 THE COURT: Fantastic.

12 MR. GOLDBERG: -- you know, wrestle with these
13 issues. And we -- you know, we intend to get them to
14 plaintiffs next week.

15 THE COURT: Fantastic. I much appreciate it and not
16 surprising given the caliber of counsel in this case. Anything
17 else regarding the macro issues?

18 (Pause in proceedings)

19 THE COURT: Okay, great. On the ongoing meet and
20 confer process, all I can say is I just strongly encourage you
21 to talk as much as you can. I'm not one who thinks just
22 because you have a discovery dispute, parties are acting in bad
23 faith. I know there's good faith discovery disputes. We'll
24 spend all day and night resolving any good faith discovery
25 dispute you want. Just try and exhaust your efforts to try and

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1 work it out, and if you can't we'll deal with it. That's all I
2 have to say about the -- the meet and confer process.

3 I would just add -- let me just add one comment. For
4 those of you -- everyone except Mr. Goldberg wasn't at the
5 meeting we had with ZHP. I'm not going to reveal any
6 confidences obviously. I can only tell you from my
7 perspective, I thought it was tremendously helpful.

8 Maybe, maybe not, plaintiff didn't get all the
9 information they wished they got, but it certainly clarified a
10 lot of the basic issues. There was no harm, no foul.
11 Everything went smoothly. So I would encourage the defendants
12 if -- if they have a knowledgeable ESI person or IT person,
13 it's not the worst thing in the world to sit down informally
14 with plaintiffs.

15 If you're worried, do it here at the courthouse, I'll
16 make myself available for the meeting if in case you're worried
17 about that. I think it was tremendously beneficial ZHP stepped
18 up to the plate in good faith and I just think it advanced the
19 ball tremendously in the case. That's all I have to say about
20 the meet and confer ESI topics. Anything else anybody else
21 have?

22 MR. GOLDBERG: Yeah, Your Honor, this is -- this is
23 Seth Goldberg. I just wanted to raise something because, you
24 know, in looking at some of these issues that have been raised
25 and in particular that when we talk about ESI, one of the

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1 things that hasn't happened I think across the board, although
2 I haven't been at each meet and confer but it's based on my
3 understanding with my -- with my defendant colleagues, is that
4 while defendants have proposed lists of ESI custodians, there
5 has been no agreement on the lists of ESI custodians.

6 And for -- for many of the defendants, plaintiffs
7 have not provided responses with, and even with respect to the
8 ZHP, while we appeared in Your Honor's courtroom a few weeks
9 ago to talk about ESI discovery, we still have no list from
10 plaintiffs about what they think the right ESI custodians are.

11 And to the extent that plaintiffs want us to do -- do
12 work around ESI and search for -- for documents and build
13 document databases, it's very hard to do unless we have an
14 agreed upon list of ESI custodians.

15 And, you know, defendants are -- have proposed their
16 ESI custodians, have supplemented those lists and have not
17 heard back from plaintiffs and there has not yet been
18 agreements as to ESI custodian lists and I would -- I think it
19 would be helpful to this process if plaintiffs could -- could
20 provide that information, provide who they think the ESI
21 custodians should be.

22 Because what I don't want to have happen is later in
23 November, there be lists -- very long lists of ESI custodians
24 proposed by plaintiffs and because of a lack of time, the Court
25 -- because of the lack of time to negotiate about plaintiffs'

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1 proposals, defendants are stuck responding to very long lists
2 of ESI custodians.

3 THE COURT: Mr. Slater, could you speak to that?

4 MR. SLATER: Your Honor, it's hard to --

5 THE COURT: -- I certainly think --

6 MR. SLATER: -- understand where that's coming from.
7 The process is ongoing. We're trying to learn all the names of
8 the people that are going to matter. As much as we're trying,
9 we -- you know, we put it on a letter to be very frank with the
10 Court, in my experience I'm pretty confident that as we start
11 to see the documents and as we start to take depositions, that
12 we're going to find out about people that were never disclosed
13 to us.

14 I think that's going to happen here and we're doing
15 the best we can. I don't know why Mr. Goldberg is asking for a
16 list right now. They've been giving us names, we've been
17 giving them names. As he said, he's not involved in the meet
18 and confers having to do with the other defendants so he hasn't
19 been there.

20 But both sides are trying to I assume work as hard as
21 we can to try to compile those lists. That's the process we're
22 in right now, so the lists aren't done because we're in the
23 meet and confer process. I mean, I suppose if he wants we can
24 send him a list of the names that we know, but he knows the
25 same list we know within the names from him and we've told him

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1 the names that we have and asked about all those people as Your
2 Honor, you know -- you know, we've done name after name after
3 name, so we're -- we're doing the best we can to define the
4 list.

5 THE COURT: Well, it's not just a one-way street,
6 defendants to plaintiffs. I'm not intimately aware obviously
7 of what you've exchanged and not exchanged, but it has to be a
8 two-way street. Plaintiffs exchange names, defendants exchange
9 names, you talk, some are added, some are subtracted.

10 But Mr. Goldberg seems to be saying that the
11 defendants, it would be helpful to them if they just had some
12 preliminary idea of who plaintiff is thinking of. I mean,
13 after all, by November 20 you're going to send your letters to
14 the Court, that's only two weeks away.

15 MR. SLATER: Yeah. No, I don't disagree. I mean,
16 we're still waiting for things. For example, to my knowledge
17 and Mr. Goldberg can correct me -- correct me if he wants, I
18 don't think we have -- even have the English translations of
19 those Chinese org charts that we were discussing when we
20 appeared in Court for that meeting.

21 My understanding is though we were promised they were
22 coming, we still don't have them so, you know, if they want us
23 to send the list, I mean, we're compiling custodian lists.
24 We're doing it in concert with the defense, but we can send
25 them those lists next week. It's not a problem. You know, I'm

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1 not in every one of the meet and confers either. My
2 understanding is our team has been disclosing the names they
3 know and have been running them by the defense, so I don't
4 think there's going to be a lot of surprises. But, I mean, we
5 can send them the lists that we have as of next week. That's
6 no problem.

7 THE COURT: Thanks. Appreciate it.

8 MR. SLATER: Thank you. But ultimately if they're
9 very important but, you know, again Mr. Goldberg can correct me
10 if I'm wrong, but if I'm right that they haven't even given us
11 the translated organizational charts, you know, he still has 24
12 teeth to pull out of the mouth and we're getting maybe one
13 halfway out at this point.

14 MR. GOLDBERG: Yes, you're correct, we haven't
15 provided those organizational charts in English. You've had
16 them and we can provide them. We've been dealing with some
17 other things in this case. But the point is that for none of
18 the other defendants and not ZHP, I -- I think what you have is
19 long lists of ESI custodians that you haven't provided to
20 defendants, and that is going to make the process very
21 difficult if those long lists are produced to us much later in
22 November and --

23 THE COURT: You'll get that --

24 MR. GOLDBERG: -- we will --

25 THE COURT: You'll get that next week. You'll get

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1 that next week, Mr. --

2 MR. SLATER: Yeah, one -- one comment. I don't know
3 -- I don't know if Mr. Goldberg thinks that we have some long
4 secret list that we're holding back, but I think that it's very
5 important, Judge, to put -- put our finger on what just
6 happened because Mr. Goldberg initiated a discussion saying I
7 want their list of custodians now, and then in the side comment
8 says yeah, you're right, we didn't give you the translated org
9 charts yet.

10 I mean, this is such fundamental information and we
11 don't have org charts from all the defendants, we don't have
12 completed ones. We have ZHP saying we'll find you those
13 charts, then he says well, we'll get around to it but we've
14 been busy, when they promised, Your Honor, multiple times going
15 back weeks and weeks that they would be promptly produced and
16 they haven't been.

17 I think that if we're going to be pushed like this,
18 then there should be an order that we get those translated org
19 charts -- complete org charts from all the defendants. No more
20 they keep falling out of the tree three weeks or three months
21 from now, you know, in the next couple days.

22 I mean, we're doing the best we can but -- but for
23 Mr. Goldberg to sit there and stridently say we're holding back
24 long lists -- which we're not, while he's not even giving us
25 translated organizational charts is -- is very problematic and

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1 it's -- and I think it shows a strategy and I think and I think
2 it's emblematic of a lot of what's been going on, especially
3 with ZHP in discovery in this case.

4 And I would ask for the Court to direct them to
5 produce all of the org charts in the next couple days fully
6 translated. They've had plenty of time. They've promised this
7 to the Court multiple times and I think that it's really,
8 really -- it's on the borderline of outrageous for counsel to
9 make that demand to the Court just now while they won't even in
10 good faith get us the org charts in English.

11 THE COURT: Okay, we're going to -- we're going to
12 move on but I'll cover the org charts in the order to be
13 entered.

14 The next issue is the short form complaints. I think
15 we're on the same page on that. There's absolutely no question
16 that we have to do it according to the order, we have to do it
17 so that the statistics and tallies can be appropriately added
18 up or compiled.

19 The only -- the thought that occurred to me, Mr.
20 Goldberg, was if we knew the complaints or docket numbers of
21 the case -- cases that have to do it the right way, we're happy
22 to enter an order requiring them to do it by X date, and if
23 they don't do it, we'll issue an order to show cause and if
24 they don't do it, the case will be dismissed. So is it
25 possible to just send me a list? Can someone put together a

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1 list --

2 MR. GOLDBERG: Yes.

3 THE COURT: -- of the docket numbers that have to be
4 done the right way?

5 MR. GOLDBERG: Yeah, I believe we can get that to you
6 this week, Your Honor.

7 THE COURT: Okay. And I'm sure the plaintiffs'
8 counsel, now being on notice of the issue, will -- will notify
9 their group that there's no debate that these filings have to
10 be done in accordance with the order so we can keep track of
11 all the cases.

12 We're only talking about a hundred or so cases now
13 and in theory, we might be talking about ten, 20 times that
14 amount, so we'd better get it right at the beginning or else
15 we'll pay the price down the road. So I'll wait for that list,
16 Mr. Goldberg, and we'll enter the order.

17 MR. GOLDBERG: Thank you.

18 MR. SLATER: And, Judge, we agree. So if -- Mr.
19 Goldberg, if you want to send us the list of those cases
20 especially and identify for us a particular law firm, we can
21 then reach out in our liaison capacity and speak to these firms
22 directly to try to give them a kick to make sure they do what
23 they're supposed to do as well.

24 MR. GOLDBERG: Absolutely.

25 THE COURT: Okay, thank you. And then the last issue

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1 on the agenda is the April 29 request for information. I'm not
2 sure what the Court needs to do on this except I assume this is
3 just part of the parties' meet and confer discussions.

4 MR. SLATER: Judge, I think what -- frankly we're
5 going to need is for the Court to order the defense to actually
6 meet and confer on this and actually start to give up
7 information, because they've essentially refused to. And if
8 you just looked at their letter, they said we'll give
9 information to the plaintiffs when we determine that we -- that
10 they need it or when we feel like giving it to them.

11 I'm paraphrasing, but we had a very, very robust meet
12 and confer in the Benicar litigation which spanned many
13 conference calls and you actually ordered us to get in person
14 into a conference room with our IT tech consultant so that we
15 could talk through the detailed issues that needed to be
16 addressed so that the document production could actually be set
17 up before it starts rolling out. And from all indications from
18 the defense, they don't want to do this. They keep telling us
19 it's -- it's premature.

20 THE COURT: No.

21 MR. SLATER: You know, we don't even --

22 THE COURT: No.

23 MR. SLATER: -- we don't even have -- we don't even
24 know if they have (inaudible). I think contained in an email
25 the other day they have not yet even started doing any testing

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1 of search terms. They haven't done any work on that which puts
2 them months and month behind where that issue was in the other
3 litigation and if they're really not testing yet and they're
4 not able to even give up information about their platforms and
5 servers, et cetera, when -- when it's ready for the documents
6 to roll out, we're going to have all sorts of issues.

7 MR. GOLDBERG: Your Honor, this is Seth Goldberg. I
8 mean, a couple of things. This really -- the last point really
9 gets to this issue about the fact that we haven't reached
10 agreement on ESI custodians and plaintiffs want there to be
11 testing, want there to be work done on the ESI --

12 (Automated attendant announces someone has left the
13 conference)

14 MR. GOLDBERG: -- but there -- there isn't even
15 agreement on the custodians that have been proposed. And to
16 start doing testing without a list of ESI custodians would
17 require -- would result in a piecemeal process for defendants
18 and a very costly one, and -- and Mr. Slater is not being
19 truthful with respect to the reference to the letter that we
20 sent.

21 We have not only discussed different categories of
22 ESI during the individual meet and confers, but we've agreed to
23 produce or discuss six categories which are fairly broad as
24 part of this process and to provide information about TAR (ph)
25 and predictive coding, about vendors, about non-company

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1 computers and devices, about backup storage and archiving,
2 about network servers, and about email messaging and
3 communication.

4 This is -- this is a -- this is a process. We have
5 by -- by and large, this is an individual defendant process.
6 Some of this was discussed with Mr. Duke (phonetic) for ZHP
7 before Your Honor, and the process is underway. I do think if
8 we can get to a place where we have some agreement on ESI
9 custodians, the process will be enhanced.

10 THE COURT: Can I ask this question? Mr. Slater, are
11 we talking about the individual API and finished dose
12 manufacturing defendants?

13 MR. SLATER: At this point we are because that's
14 how --

15 THE COURT: Right.

16 MR. SLATER: -- because that's how we've been
17 staging --

18 THE COURT: Right.

19 MR. SLATER: -- the discussion.

20 THE COURT: All right, what I'm going to do is I
21 don't think this is the most productive way to do this is by
22 letters or emails or phone calls, I'm going to order an in-
23 person meeting of the -- even if it's just the attorneys by the
24 November 15th, so that's nine days or so, because the letters
25 to the Court are due the 27th. So I don't have to tell you

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1 that meeting in person is the best way to do it.

2 I'm going to look at the local rule whether to
3 require a knowledgeable IT person to be there, but the local
4 rules require that everyone identify the IT person who has the
5 most knowledge regarding blah, blah, blah, blah, blah.
6 So the parties are going to meet -- you don't have to meet
7 here, you can meet in a law office, but of course we'll make
8 facilities available.

9 But I agree with Mr. Slater that you just have to sit
10 down over a conference room table and -- and do this because
11 it's just too cumbersome to do it given a case like this over
12 the phone or by email, so I'll put that in the order. Are
13 there any other issues we want to address?

14 Okay, I think the next time we're going to get
15 together in person is the 20th. We're going to have oral
16 argument on the macro issues. If there's any other issues we
17 need to address while we're together we'll do it, and if
18 there's nothing else, this matter is adjourned. Thank you,
19 counsel.

20 ALL COUNSEL: Thank you, Judge.

21 (Proceedings concluded, 5:00 p.m.)

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C E R T I F I C A T I O N

I, Diane Gallagher, court approved transcriber,
certify that the foregoing is a correct transcript from the
official electronic sound recording of the proceedings in the
above-entitled matter.

DIANE GALLAGHER

DATE

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